



C.M.A.(MD).No.298 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.10.2023

Delivered on: 10.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

C.M.A.(MD).No.298 of 2023

and

C.M.P.(MD)No.10518 of 2023

K.M.Vairavan .. Appellant / Respondent / Petitioner

Vs.

R.Meenakshi .. Respondent / Petitioner / Respondent

Prayer:- Appeal filed under Section 19(1) of the Family Court Act, to set aside the common fair order and decretal order, dated 22.11.2022 passed in I.A.No.332 of 2022, in H.M.O.P.No.915 of 2017, on the file of the Family Court, Madurai and allow the present Civil Miscellaneous Appeal.

For Appellant : Mr.A.Saravanan

For Respondent : No appearance



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JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The husband, who suffered a decree of maintenance before the Family Court, is the appellant before us.

2. The appellant - husband filed H.M.O.P.No.915 of 2017, seeking dissolution of marriage with the respondent, solemnized on 11.09.2014. Pending the said H.M.O.P., the respondent - wife filed an application in I.A.No.332 of 2022, seeking interim maintenance, under Section 24 of the Hindu Marriage Act, 1955.

3. In the said application for interim maintenance, the respondent - wife has stated that the appellant has been looking after the family business, which is flourishing and in order to maintain the minor son born to the appellant and the respondent and to maintain herself, a sum of Rs.50,000/- each, per month was prayed for as interim maintenance, apart from Rs.40,000/- towards litigation expenses.



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4. The appellant filed a counter affidavit to the said application before the Family Court, denying the claims of the respondent. The appellant also stated that the respondent was gainfully employed and therefore, she was not in need of any money to maintain herself. The appellant also stated that after COVID, his business suffered and the appellant is servicing two loans availed of and prayed for dismissal of the said application.

5. The Family Court took up the said I.A. along with main H.M.O.P, in and by an order dated 22.11.2022, granted a decree for dissolution of the marriage as prayed for by the appellant and insofar as the I.A.No.332 of 2022, the Family Court granted a decree for Rs.30,000/- per month to be paid to the respondent and the minor son towards maintenance and also directed a sum of Rs.25,000/- to be paid towards litigation expenses.

6. Aggrieved by the decree in I.A.No.332 of 2022, the appellant is before us, challenging the said decree, mainly on the grounds that the



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Family Court ought not have entertained the interim application under Section 24 of the Hindu Marriage Act, 1955, when the main divorce proceedings itself came to a closure and further that the Family Court has failed to take into consideration the difficulties faced by the appellant and also the fact that the respondent was gainfully employed and earning about Rs.50,000/- per month, besides also being supported by her elder brother.

7. Though the respondent - wife has been served with notice in the above appeal, she has not chosen to enter appearance either in person or by counsel.

8. We have heard Mr.A.Saravanan, learned counsel appearing for the appellant and also perused the records.

9. The first submission raised by the learned counsel for the appellant is that the Family Court ought not to have entertained the application under Section 24 of the Hindu Marriage Act, 1955 and when the Family Court had disposed of the main Original Petition granting a decree of divorce in favour of the appellant, the application in I.A.No.332



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of 2022, which was only interim in nature, ought to have been dismissed and no orders could have been passed.

10. The second submission raised by the learned counsel for the appellant is that the Family Court has failed to consider that the respondent was gainfully employed and earning Rs.50,000/- per month and she was not in any need of maintenance. In short, the quantum of maintenance directed by the Family Court is also questioned.

11. Insofar as the first submission, with regard to the procedure adopted by the Family Court, we do not find the same to be irregular. Admittedly, the said application in I.A.No.332 of 2022, seeking interim maintenance was filed, pending H.M.O.P.No.915 of 2017. The Family Court has specifically taken note of the said fact and held that the maintenance was being granted only under Section 25 of the Hindu Marriage Act, and not under Section 24 of the Hindu Marriage Act. In any event, now the law is well settled on the point that it is not necessary that in order to invoke Section 24 of the Hindu Marriage Act, an application should be made only during the proceedings. Therefore, we do not find any



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merit in the first contention put forth by the learned counsel for the appellant.

12. Insofar as the challenge to the quantum of maintenance directed by the Family Court, it is an admitted fact that the appellant is carrying on family business. The appellant has not produced any documentary evidence to buttress his contention that after COVID, the family business has suffered and that loans have been taken and that the appellant is not in a position to pay maintenance. Insofar as the claim regarding the respondent earning Rs.50,000/- per month, it is seen that the respondent had resigned her job, from Infosys, where she was earning Rs.50,000/- per month, soon after the marriage proposal with the appellant came about. The appellant has not been able to produce any material before the Family Court, to show that his wife was gainfully employed and was earning. We do not find any error or infirmity in the finding of the Family Court and a sum of Rs.30,000/- ordered for the wife and the minor son towards monthly maintenance is equitable and fair. We do not propose to interfere with the same.



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13. However, insofar as the litigation expenses, the Family Court has ordered a sum of Rs.25,000/-. We are of the opinion that award of the Family Court is on the higher side. Accordingly, the award of Rs.25,000/- towards litigation expenses is modified to Rs.15,000/-. In all other aspects, the order and decreetal order of the Family Court, Madurai stands confirmed.

14. It was also brought to the notice of this Court by the learned counsel for the appellant that instead of paying maintenance every month, the appellant is willing to pay a lump sum and settle the matter with the respondent. Unfortunately, despite service of notice, the respondent has not chosen to appear before us.

15. Considering the request of the learned counsel for the appellant regarding one time settlement, we give liberty to the appellant to move the Family Court, Madurai, to modify the order in I.A.No.332 of 2022, where the proposal of one time settlement can be worked out, after hearing the respondent / wife.



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16. In fine, the Civil Miscellaneous Appeal stands partly allowed and the award of maintenance to the respondent and the minor child of the appellant is confirmed and the award of litigation expenses of Rs.25,000/- is modified to Rs.15,000/-. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(T.K.R.J.) & (P.B.B.J)
10.10.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
Ls

To

- 1.The Family Court,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls

judgment in
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